

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Commercial Spectrum Enhancement Act and Modernization of)	WT Docket No. 05-211
The Commission's Competitive Bidding Rules)	

COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.

Leap Wireless International, Inc. and its Cricket subsidiaries (collectively, “Leap”) submit these comments in response to the above-captioned Further Notice of Proposed Rulemaking (“Further Notice”).¹

I. INTRODUCTION AND SUMMARY

In the *Further Notice*, the Commission considers whether its general competitive bidding (“Part 1”) rules should be modified in order to further tighten access to benefits presently accorded to designated entities (“DEs”) in the auction process. Specifically, in response to elements of a proposal submitted by Council Tree Communications, Inc. (“Council Tree”),² the Commission has tentatively concluded that it will restrict the award of designated entity benefits to an otherwise qualified DE where the DE has a “material relationship” with a “large in-

¹ *In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Further Notice of Proposed Rulemaking, WT Docket No. 05-211 (rel. Feb. 3, 2006).

² *See, e.g., See Council Tree Communications, Inc., Ex Parte, Abundantly Clear Need to Implement DE Program Reforms Immediately for the AWS Auction* (Jan. 11, 2006) (“Council Tree January 2006 *Ex Parte*”).

region incumbent wireless service provider.”³ The Commission also seeks comment in a more open-ended fashion on whether this restriction should apply only to large in-region incumbent wireless providers, or should instead be expanded to include other large entities with significant interests in communications services.

Leap is especially qualified to comment on these proposals, since Leap began life as one of the few firms able to deliver on the promise of the DE program. Leap was one of the only companies ever to successfully utilize the DE rules governing small publicly traded companies with widely dispersed voting power.⁴ More recently, Leap participated in Auction No. 58 in a DE joint venture with Alaska Native Broadband.⁵

As Leap has grown, it has led the wireless industry in offering true flat-rate pricing: Leap offered – and still offers – consumers unlimited mobile wireless services within a local service area for a reasonable flat monthly rate and without requiring its customers to enter into a long-term contract, to meet a credit standard, or to agree to early termination fees. This pricing structure has introduced the benefits of mobile wireless services to many consumers who might otherwise be unable to obtain them.⁶ Leap also draws customers who want more predictable bills

³ *Further Notice* at ¶ 11.

⁴ *See* 47 C.F.R. § 24.720(f); 24.709(b)(ii).

⁵ *See* Public Notice, *Wireless Telecommunications Bureau Grants Broadband Personal Communications Services (PCS) Licenses*, DA 05-2387, WT Docket No. 05-149 (rel. Sept. 6, 2005).

⁶ 69 percent of Leap’s subscribers have household incomes of less than \$35,000 per year and 40 percent are Hispanic or African-American. The usage patterns of Leap’s customers are also vastly different from the usage of customers of other

or who want to avoid overage charges. Leap has been able to provide high-quality, low-cost mobile wireless service in large part because of its business model under which it (i) has deployed a high capacity, state-of-the-art CDMA network, (ii) has streamlined its operations, and (iii) is able to acquire customers at costs substantially below the costs of other industry leaders.

The benefits reaped by U.S. consumers as the result of Leap's entry into the wireless marketplace constitute powerful evidence that the Commission's DE program can continue to be of enormous value in stimulating new competition to a consolidating incumbent base of national wireless "supercarriers." However, Leap shares the concerns raised by Council Tree that the continued viability of the DE program will be greatly diminished if it continues on its present course as a vehicle for the supercarriers to enhance their already large spectrum holdings using benefits intended for smaller, entrepreneurial entrants.

As Council Tree has highlighted, the general issue is one of consolidation and spectrum concentration: the nation's top five carriers control ninety percent of CMRS spectrum on a MHz-POP basis. And recently, these carriers have been increasingly aggressive in utilizing DE structures as proxies to gain access to even

carriers: the average Leap customer uses approximately 1,450 minutes per month (nearly an hour a day, every day), while the industry average is about half that number. Indeed, approximately 50% of Leap's customers no longer have landline phone service, and 90 percent use Leap as their primary phone service—far outpacing the industry average on both counts.

more spectrum at cheaper prices – in Auction No. 58, for example, these carriers gained access to 71% of their spectrum through a DE vehicle.⁷

Leap thus agrees with Council Tree that the Part 1 rules should be amended. However, the Commission’s reforms should extend beyond the four corners of the DE program to address the underpinnings of the problem that Council Tree has identified.

The Commission declined in 2003 to impose a spectrum aggregation limitation with respect to AWS spectrum,⁸ but that determination should be revisited. Recent spectrum consolidation through wireless company mergers warrants the creation of a general auction rule – which should be used in the AWS auction and which can be implemented in future CMRS spectrum auctions on a case-by-case basis – that will promote the express goals of Congress to “avoid[] excessive concentration of licenses” and to “disseminat[e] licenses among a wide variety of applicants.”⁹ The Commission justified its elimination of the spectrum cap several years ago by expressly relying on its future ability to “shape the initial distribution of licenses through the service rules adopted with respect to specific auctions.”¹⁰ And the Commission downplayed spectrum concentration concerns

⁷ *Council Tree January 2006 Ex Parte* at 9.

⁸ *See* In the Matter of Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Report and Order*, WT Docket No. 02-353 (rel. Nov. 25, 2003) at ¶67.

⁹ 47 U.S.C. 309(j).

¹⁰ 2000 Biennial Regulatory Review—Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, FCC 01-328, ¶ 52 (Dec. 18, 2001).

raised by competitive carriers in recent merger proceedings by *expressly* relying upon the ability of these carriers to access AWS spectrum at auction.

For the problem of spectrum concentration to be adequately addressed in the AWS and possibly other upcoming spectrum auctions, Leap proposes that no carrier whose licensed service area has a “significant geographic overlap” with an area to be licensed at auction if the aggregate amount of CMRS and AWS spectrum held in the overlapping areas would exceed 80 MHz. Such a limitation strikes the right policy balance: it allows incumbent wireless carriers to gain access to additional AWS spectrum in the upcoming auction (and with no express constraint or cap in the aftermarket), but not on an unlimited basis that will foreclose access to a diverse cross-section of competitive carriers and new entrants that also require access to spectrum.

For the same reasons, Leap supports Council Tree’s proposal to restrict the in-region use of DE structures by large incumbent wireless carriers. The Auction 58 experience demonstrates that the nation’s largest wireless providers have been able to acquire access to tremendous amounts of spectrum at a government-subsidized discount. While there is a balance to be struck in encouraging DEs to partner with entities that are capable of providing financial and operational support, as well as access to capital and financial resources, it does not serve the public interest to effectively concentrate even more spectrum in the hands of giant incumbent wireless carriers through the use of the DE program.

This said, because there is a balance of policy objectives here, Leap does not support the extension of such a restriction to other communications companies that are not the nation's largest incumbent holders of CMRS spectrum. Such companies remain important sources of capital and expertise for DEs to rely upon, and are themselves potential sources of facilities-based wireless competition that will benefit consumers.

Finally, Leap urges the Commission to announce the rules proposed in this proceeding reasonably in advance of the AWS short-form application deadline. To do otherwise would inject a level of uncertainty that would vastly undermine the upcoming auction.

II. THE COMMISSION SHOULD ADOPT AN ELIGIBILITY RESTRICTION FOR PARTICIPATION IN THE AWS AUCTION, WHICH COULD ALSO BE APPLIED TO FUTURE AUCTIONS OF CMRS SPECTRUM ON A CASE-BY-CASE BASIS

Leap proposes that incumbent entities who have an attributable interest in more than 80 MHz of licensed CMRS spectrum and AWS spectrum be restricted from bidding for additional spectrum that “significantly overlaps” their licensed service regions. For ease of administration a “significant geographic overlap” would be determined by reference to Section 20.6 of the Commission's rules, as suggested in the *Further Notice*.¹¹ Leap believes that its proposal should be addressed in conjunction with the proposal of Council Tree's because both proposals are focused

¹¹ *Further Notice* at ¶ 20. Section 20.6 of the Commission's rules provides that a significant overlap occurs when there is an overlap of at least 10 percent of the population within the impacted service areas. *See* 47 C.F.R. § 20.6.

upon the same problem: the consolidation of spectrum resources and its current and potential pernicious effects on competition. Council Tree points out that the top five wireless carriers won approximately 71% of their spectrum in Auction No. 58 using DE structures to gain access to significant bidding credits.¹² While Leap supports reforms of the DE program that will address this concern, the concern also can and should be addressed more generally via a spectrum aggregation restriction.

A. The Commission Expressly Looked to the AWS Auction As a Means of Counteracting Potential Anticompetitive Effects of Spectrum Consolidation Associated with Recent Wireless Mergers

When the Commission's general CMRS spectrum cap was eliminated in 2003, it was difficult for the agency to predict the precise extent of consolidation that would occur in the wireless marketplace. In fact, the degree of CMRS industry consolidation and its effects have been considerable.

According to Council Tree's estimates, the top five wireless carriers control approximately *ninety percent* of the United States wireless subscribers, up from approximately fifty percent in 1995.¹³ And in another pending proceeding, Leap has demonstrated that the traditional measures of concentration—the CR₄, CR₈, and the Herfindahl-Hirschman Index (HHI)—all confirm that the “nationwide carriers’ relative share of the CMRS market, as compared to regional carriers, is steadily increasing.”¹⁴ Indeed, after the merger between Sprint and Nextel, three

¹² *Council Tree January 2006 Ex Parte* at 9.

¹³ *Id.* at 10.

¹⁴ “Wholesale Pricing Methods of Nationwide Carriers Providing Commercial Mobile Radio Service: An Economic Analysis” (November 2005) (“*ERS Report*”), at 5

nationwide carriers each will have more subscribers than *all the regional, small and rural carriers put together*.¹⁵

The recent wireless mega-mergers have all contributed to a tremendous consolidation of spectrum resources. Absent regulatory intervention, the AT&T-Cingular merger would have led the post-merger entity to hold more than one-third of the available spectrum for mobile telephony in some geographic areas.¹⁶ As a result of the combination, seven geographic areas lost a competitor, dropping the number of rival carriers from three to two.¹⁷ In addition, the Commission identified approximately twenty markets in which it was questionable whether there would be enough competing carriers.¹⁸ Similarly, the merger of Nextel and Sprint reduced the number of nationwide carriers from five to four,¹⁹ while the 2005 merger of

(Attachment A to Comments of Leap Wireless International, Inc., WT Docket No. 05-265 (Nov. 28, 2005).

¹⁵ According to the data the Commission cited in its *Tenth Annual Report*, small, regional, and rural carriers have an estimated subscriber base of 34.1 million. *See id.*, Appendix A, Tables 1 and 4. The *ERS Report* contains detailed analysis showing the overwhelming market power nationwide carriers possess in relation to small, regional, and rural carriers. *See ERS Report* at 4–9.

¹⁶ Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 04-70, *Memorandum Opinion and Order*, FCC 04-255, ¶ 109 (Oct. 26, 2004) (“AT&T-Cingular Order”).

¹⁷ *Id.* at ¶ 193.

¹⁸ *Id.* at ¶¶ 194, 196.

¹⁹ Application of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 05-63, *Memorandum Opinion and Order*, FCC 05-148, ¶ 30 (Aug. 8, 2005) (“Sprint-Nextel Order”).

Western Wireless and ALLTEL also reduced competition in many geographic areas.²⁰

Significantly, in all of these merger proceedings, the Commission *expressly* looked to the AWS auction as a means of alleviating any pernicious effects of spectrum consolidation:

- The Sprint-Nextel Merger: “Applicants argue that competitors will have access to nearly 300 megahertz of spectrum in other licensed bands...specifically...130 megahertz of AWS spectrum.”²¹
- The ALLTEL-Western Wireless Merger: “We believe, however, that carriers’ 3G related needs for additional spectrum generally will align with the arrival of suitable spectrum in future auctions, including those for AWS.”²²
- The AT&T-Cingular Merger: “We believe, however, that the arrival of carriers’ 3G-related needs for additional spectrum generally will align with the arrival of suitable spectrum in future auctions, including those for AWS.”²³

If these supercarriers are now allowed to accumulate AWS spectrum without the Commission taking any account of their existing spectrum assets *ex ante*, the Commission will have undercut one of the central underpinnings of approving these combinations in the first instance.

²⁰ Applications of Western Wireless Corporation and ALLTEL Corporation for Consent to Transfer of Control of Licenses, WT Docket No. 05-50, *Memorandum Report and Order*, FCC 05-138, ¶ 159 (Jul. 19, 2005) (“ALLTEL-Western Wireless Order”).

²¹ *Sprint-Nextel Order* at ¶ 154.

²² *ALLTEL-Western Wireless Order* at ¶ 74.

²³ *AT&T-Cingular Order* at ¶ 140.

B. Because of unique character of 3G technology and the limited spectrum available, it is especially important to effectuate the policy objectives of Section 309(j) of the Telecommunications Act

Congress has expressly charged the Commission, in implementing and conducting spectrum auctions, to pursue objectives besides supplementing the public fisc.²⁴ Indeed, Congress required the Commission to create auction rules that promote :

the development and rapid deployment of new technologies, products, and services for the benefit of the public...[and] promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants.²⁵

Congress's intention was that avoiding excessive concentration of spectrum will benefit the public interest by creating varied products that are rapidly deployed to end-users. Also, Congress believed that carefully crafted auction rules could encourage "efficient and intensive use of the electromagnetic spectrum."²⁶

The command of Section 309(j) takes on an a more urgent character when one considers how 3G technologies are today merging wireless telephony and video content. Mobile phones are no longer passive devices. The data transfer rates of 3G-enabled phones allow them "to function as a phone, a computer, a television, a

²⁴ In fact, Congress specifically excluded revenue gains from the Commission's consideration in crafting its auction rules. 47 U.S.C. 309(j)(8)(A).

²⁵ 47 U.S.C. § 309(j).

²⁶ 47 U.S.C. § 309(j)(3)(E).

videoconferencing center, a newspaper, a diary, and even a credit card.”²⁷ In short, the mobile handset is fast becoming an *active* technology in which wireless service providers are beginning to supply video media to customers on a wide-scale basis.

As wireless and video converge, the policy concerns in the video programming arena become applicable. In the context of video programming, the Commission is concerned not only with the price charged to end-users but the diversity of programming to which the U.S. population will have access.²⁸ Not only does increased consolidation in the wireless marketplace raise the specter of increased prices for consumers, it could “impose an economic, cultural, and political agenda on a public with few alternative choices” if only a few entities have access to the spectrum necessary to deliver media content through 3G technology.²⁹ If the Commission moderates spectrum consolidation through Leap’s proposed spectrum aggregation restriction, it is more likely that wireless customers will have access to a wider array of choices as 3G technology becomes mainstream. Indeed, as the supercarriers deploy 2.5 and 3G handsets to their customers, it is imperative that competitors have access to AWS spectrum to follow suit.

Leap’s proposed 80 MHz aggregate cap on CMRS and AWS spectrum is an auction rule that will afford the opportunity for innovative competitors to

²⁷ The Council of Economic Advisors, *The Economic Impact of Third-Generation Wireless Technologies*, October 2000, at 8 (*citing* International Telecommunications Union, “The Next Generation of Mobile Communications,” October 10, 2000).

²⁸ Further Report on the Packaging and Sale of Video Programming Services to the Public, ¶ 65 (Feb. 9, 2006)

²⁹ Statement of Commissioner Jonathan Adelstein, *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, at 2.

experiment with more efficient voice and data transfer protocols and still allow established companies to roll out wireless data services. Cingular, one of the nation's largest wireless carriers, has acknowledged that it would not need more than 80 MHz of spectrum to provide a "full menu of competitive voice and data services."³⁰ And if, for some reason, a carrier requires more than 80 MHz, the auction rule that Leap proposes in no way prevents carriers from acquiring more spectrum in the aftermarket – the rule allows Cingular and other large players to remain competitive in the market for wireless data customers yet allows newer companies the chance to innovate and compete, as well.

C. The Commission Envisioned the Use of Targeted Auction Aggregation Restrictions When It Eliminated the CMRS Spectrum Cap

The Commission's order eliminating the spectrum cap expressly envisioned the auction eligibility restriction that Leap proposes today.³¹ Although the Commission determined that, on balance, a broad-based restriction on spectrum holdings does more harm than good, the Commission realized that one-time auction rules may accomplish the objectives of Section 309(j) and other policy goals without interfering unduly with the market's ability to allocate spectrum to its most efficient use. In this regard, the order noted the Commission's "ability to carry out case-by-case review of transactions and the Commission's ability to shape the initial distribution of licenses through the service rules adopted with respect to specific

³⁰ *AT&T-Cingular Order* at ¶ 29.

³¹ 2000 Biennial Regulatory Review—Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, FCC 01-328, ¶ 52 (Dec. 18, 2001).

auctions.”³² For the reasons stated above, the Commission should shape the initial distribution of AWS spectrum licenses, and should consider future auctions on a case-by-case basis.

The use of such limitations is not without precedent. In the most comparable auctions of size, scope and importance relative to AWS, the Commission limited eligibility for the PCS A and B blocks to entities that were not licensees of cellular systems in the same area.³³ In Auction No. 8, the Commission adopted a “one time only” auction rule designed to prevent the accumulation of spectrum at more than one orbital position capable of serving the entire continental U.S. in order to promote diversity of ownership and competition in the Direct Broadcast Satellite service.³⁴ The rule did not limit the ability to sell these licenses in the aftermarket, and the Commission remained “free to evaluate future transactions on a case-by-case basis under [its] Title III authority.”³⁵ The auction rule that Leap proposes herein offers similar advantages and still encourages important policy objectives.

Auction No. 17 for Local Multipoint Distribution Service (“LMDS”) in the 28 and 31 GHz bands also included a similar limitation on spectrum accumulation. In that auction, the Commission’s rule forbade “any entity owning an attributable

³² *Id.*

³³ Amendment of the Commission’s Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd 7700, 7744-45, ¶ 105 (1993).

³⁴ Revision of Rules and Policies for the Direct Broadcast, IP Docket No. 95-168, *Report and Order*, 11 FCC Rcd 9712, ¶ 5 (Dec. 15, 1995) (emphasis added) (hereinafter, “DBS Rules Order”).

³⁵ *Id.* at ¶ 31.

interest in an incumbent LEC or incumbent cable company [from having] an attributable interest in an LMDS license whose geographic service area significantly overlaps such incumbent's authorized or franchised service area" for three years.³⁶ In adopting this restriction, the Commission noted that it "could maximize opportunities for increasing competition and promote the entry of new competitors."³⁷ Because of the convergence of wireless services and video programming and the rollout of 3G technology, it is important to encourage new and varied entrants into the wireless services marketplace. The Commission should be comfortable that past precedent—in similar technological situations—envisions the spectrum aggregation restriction proposed here with respect to AWS.

III. THE COMMISSION SHOULD EXCLUDE THE LARGEST IN-REGION INCUMBENT WIRELESS PROVIDERS FROM ACCESSING AWS SPECTRUM THROUGH DE STRUCTURES

Leap agrees that reserving DE benefits for those companies that have no "material relationship" with a national wireless service provider is another measure that will help to mitigate the anticompetitive effects of the growing concentration of CMRS spectrum ownership. As Council Tree has pointed out, national wireless carriers used DE structures to gain access to 71% of the spectrum won in the most

³⁶ Auction of Local Multipoint Distribution Service, DA 97-2081, *Public Notice*, at 6 (Sep. 25, 1997).

³⁷ Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and Fixed Satellite Services, CC Docket No. 92-297, *Third Order on Reconsideration*, FCC 98-115, ¶ 12 (Feb. 11, 1998).

recent PCS auction.³⁸ While there is a balance to be struck in encouraging DEs to partner with entities that are capable of providing financial and operational guidance, as well as access to capital and financial resources, it does not serve the public interest to effectively concentrate even more spectrum in the hands of giant incumbent wireless carriers – and at a discount to boot.

Specifically, Leap agrees that DE benefits should not be made available to an otherwise qualified DE that has a “material relationship” with a “large, in-region, incumbent wireless provider”³⁹ in markets where the provider is a demonstrated incumbent. In this context, “material relationship” should be defined to include material financial and operational relationships, including (i) providing a material portion of the total capitalization of the applicant (*i.e.*, equity plus debt), and (ii) providing material operational support (e.g., management, joint marketing, trademark or other arrangements).

As for the definition of “large, in-region incumbent wireless provider,” the size element should be defined as a provider having average gross revenues for the preceding three years of \$5 billion or more, with “gross revenues” defined in Section 1.2110(n) of the Commission’s rules.⁴⁰ This cutoff is a reasonable way to identify and limit the nation’s largest incumbent wireless carriers, while continuing to allow smaller, rural and regional players to pursue DE partnerships that will bring competition and diversity to the wireless marketplace. The “in-region incumbent”

³⁸ *Council Tree January Ex Parte* at 3.

³⁹ *Further Notice* at ¶ 13.

⁴⁰ *See* 47 C.F.R. § 1.2110(n).

element should be defined as proposed by Council Tree, *i.e.*, as an entity that is, or has an attributable interest in, a CMRS or AWS licensee whose licensed service area has “significant geographic overlap” in the geographic area to be licensed to the DE applicant.

IV. THERE IS NO NEED TO EXPAND THE SCOPE OF THE DE AUCTION RESTRICTION TO INCLUDE OTHER “ENTITIES WITH SIGNIFICANT INTERESTS IN COMMUNICATIONS SERVICES”

The Commission also seeks comment on whether to prohibit the award of DE benefits where an otherwise qualified DE applicant has a “material relationship” with “an entity with significant interests in communications services.”⁴¹ Leap sees no reason to impose such a restriction at this time.

The DE limitation that Council Tree has proposed is in part tied directly to the problem of spectrum concentration. This is not issue, however, with industry players that are in communications-related businesses that but do not own significant amounts existing reserves of CMRS spectrum. Given the robust spectrum assets of the nationwide incumbent wireless carriers, it simply does not make policy sense to grant them preferred access to additional spectrum that otherwise could be used to provide further competition and diversity in the CMRS marketplace. On the other hand, there is every reason for the Commission to affirmatively encourage new entrants – voice and data providers, equipment manufacturers, content and media players – to bring their competitive strengths to the wireless marketplace in general and to the DE program in particular.

⁴¹ *Id.* at ¶ 19.

From the standpoint of encouraging CMRS competition, for example, if a major content company seeks to enter the wireless marketplace as a new facilities-based entrant using AWS spectrum, it can only bring the prospect of new and exciting services for U.S. consumers. From the perspective of the DE program, the Commission has striven to achieve a

delicate balance between encouraging the participation of small businesses in spectrum-based services, and ensuring that those small businesses who do participate in competitive bidding have sufficient capital and flexibility to structure their businesses to be able to compete at auction, fulfill their payment obligations, and ultimately provide service to the public.⁴²

Non-traditional communications players, as well as smaller and regional wireless players, are important sources of capital and industry expertise for DE program participants to tap. Leap sees no need to preclude DEs from meaningful partnership opportunities with such entities.

V. THE COMMISSION MUST RESOLVE THE RULE CHANGES IN THIS PROCEEDING IN ADVANCE OF THE AWS AUCTION SHORT-FORM APPLICATION DEADLINE

Leap agrees with the Commission's judgment that its proposed rule changes should be made applicable to the AWS auction. However, the Commission's suggestion that it might effect the proposed rule changes "after the deadline for

⁴² *Id.* at ¶ 7.

filing applications to participate”⁴³ would severely undermine the prospects for a robust and competitive AWS auction.

Applicants must have a level of certainty as to the rules before they invest time and resources in structuring DE ventures. Prospective financing sources are unlikely to commit their capital to such ventures when fundamental parameters that will directly affect their investment, including being able to assess the competitive universe of bidders, are in flux. At a minimum, Leap believes that it is critical that the new rules be announced to the marketplace reasonably in advance of the short-form application deadline, even if the rules become effective after that date. To do otherwise will inject an unacceptable level of uncertainty that threatens to scuttle meaningful DE participation in the auction.

VI. CONCLUSION

Leap respectfully requests that the Commission revise its rules in accordance with the recommendations above.

Respectfully submitted,

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⁴³ *Id.* at ¶ 21.

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